

April 1, 2015

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The Hon. Valerie E. Caproni, U.S.D.J.
United States District Court, S.D.N.Y.
40 Foley Square, Room 240
New York, New York 10007

Re: *Andrew Lawrence Hosking, et al. v. TPG Capital Management, L.P., f/k/a TPG Capital, L.P., et al.*, Civ. No. 14-1749

Dear Judge Caproni:

We represent plaintiffs in the above-referenced action and in the adversary proceeding captioned *Andrew Lawrence Hosking, et al. v. TPG Capital Management, L.P., f/k/a TPG Capital, L.P., et al.*, Adv. Pro. No. 14-01848-MG (Bankr. S.D.N.Y.) (the “Bankruptcy Action”). By Order entered May 9, 2014, this Court stayed all proceedings herein in favor of the Bankruptcy Action, pending further Order of this Court. (Dkt. No. 35.) We write jointly on behalf of all parties, pursuant to this Court’s Order entered on March 2, 2015 (Dkt. No. 41), to advise Your Honor concerning the status of the Bankruptcy Action.

On May 1, 2014, Judge Glenn entered the First Case Management and Scheduling Order in the Bankruptcy Action, which in part authorized the commencement of fact discovery. (Bankr. Dkt. No. 24.) To date, the parties have served written discovery requests and responses, produced well over a million pages of documents, and conducted 13 depositions. Fact discovery is ongoing. The current deadline for the completion of fact discovery is April 10, 2015, with expert discovery scheduled to commence thereafter. (Bankr. Dkt. Nos. 134, 142.)

On May 29, 2014, defendants filed motions to dismiss the complaint on various grounds and a motion for an order terminating the recognition order in the Chapter 15 case. (Ch. 15 Dkt. Nos. 24-26; Bankr. Dkt. Nos. 36-37, 40-53.) Plaintiffs opposed defendants’ motions to dismiss and motion to terminate and Judge Glenn heard oral argument concerning those motions on December 3 and 16, 2014. (Bankr. Dkt. Nos. 127, 129.)

On December 22, 2014, Judge Glenn entered an Order Denying Motion for an Order (A) Terminating Recognition Order and (B) Dismissing this Chapter 15 Case and this Adversary Proceeding. (Ch. 15 Dkt. No. 34; Bankr. Dkt. No. 128.) Defendants filed a notice of appeal from that decision on January 5, 2015, which appeal remains pending. (Ch. 15 Dkt. No. 35; Bankr. Dkt. No. 130.)

On January 29, 2015, Judge Glenn entered the Memorandum Opinion and Order Granting in Part and Denying in Part Defendants’ Motions to Dismiss. (Bankr. Dkt. No. 135.) Specifically, the Bankruptcy Court (a) denied motions to dismiss the complaint for lack of

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personal jurisdiction as to 19 defendants; (b) granted motions to dismiss the complaint for lack of personal jurisdiction as to 9 defendants without a place of incorporation, principal place of business, or domicile in the United States; (c) dismissed the First Cause of Action (actual fraudulent transfer under New York's Debtor Creditor Law) for lack of standing; (d) dismissed the Second Cause of Action (constructive fraudulent transfer under New York's Debtor Creditor Law) on choice-of-law grounds; and (e) denied dismissal of the Third Cause of Action (unjust enrichment).¹

On February 13, 2015, certain defendants filed the Motion of TPG Defendants and Apax Partners, L.P. for Limited Reargument of Motion to Dismiss Adversary Proceeding Solely with Respect to 11 U.S.C. § 546(e). (Bankr. Dkt. Nos. 138-39.) On March 9, 2015, the Bankruptcy Court granted those defendants' motion for reargument but denied their motion to dismiss plaintiffs' unjust enrichment claim under 11 U.S.C. § 546(e). (Bankr. Dkt. No. 148.)

By letter filed on February 16, 2015, plaintiffs requested on behalf of all parties that the Bankruptcy Court approve a negotiated briefing schedule for plaintiffs' anticipated motion for leave to amend the complaint. (Bankr. Dkt. No. 140.) On February 17, 2015, Judge Glenn entered the Fourth Case Management and Scheduling Order, which authorized plaintiffs to file a motion for leave to amend and deferred the remaining defendants' time to answer the complaint pending the adjudication of that motion. (Bankr. Dkt. No. 142.)

On March 18, 2015, pursuant to a settlement between plaintiffs and defendant Nikesh Arora, Judge Glenn entered the Stipulation and Order Dismissing Defendant Nikesh Arora with Prejudice. (Bankr. Dkt. No. 149.)

On March 19, 2015, plaintiffs filed their motion for leave to amend, which included the proposed First Amended Complaint. (Bankr. Dkt. No. 150-54.) The First Amended Complaint would primarily (a) assert additional statutory causes of action under English or, in the alternative, Luxembourgish law; and (b) join as additional named defendants certain alleged subsequent transferees whose identities were disclosed in the course of discovery. Defendants' opposition papers are due by May 4, 2015, plaintiffs' reply papers are due by June 3, 2015, and oral argument is scheduled for June 22, 2015.

* * *

¹ The nine defendants dismissed for lack of personal jurisdiction included: TPG Capital, LLP, Apax Partners LLP, Martin Halusa, Apax WW Nominees Ltd., Apax Partners Europe Managers Ltd., Apax Europe VI GP Co. Ltd., Apax Europe VI GP, L.P., Apax Europe VI-A, L.P., and Apax Europe VI-1, L.P. Defendant Apax Partners, L.P. did not move to dismiss the complaint on personal jurisdiction grounds.

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The parties will submit a further joint status letter to this Court in six months or as otherwise directed by the Court. We can be available at the Court's convenience should Your Honor have any questions concerning the status of the Bankruptcy Action.

Respectfully yours,

/s/ Marc D. Ashley

Marc D. Ashley
CHADBOURNE & PARKE LLP
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/s/ Alan McDowell

Alan McDowell
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cc: Counsel for all defendants (by electronic filing)